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Editor's Note

THANKS TO THE VISION of our chairman, Jack Josephson, and to the enthusiasm of our talented contributors, we are pleased to present the inaugural issue of *IFAR Journal.*

Clara Graziani Bronson, an associate with IFAR's authentication service for many years and a frequent contributor to *IFARreports*, discusses the image of a popular saint in portrait painting.

Franklin Feldman, formerly an IFAR board member and presently a member of the Board of Directors of the Art Loss Register and an Art Law professor at Columbia Law School, sheds new light on the French Law of Experts.

Jennifer Landes, an art historian, writes the book review we wish we'd written. She also reports on two events: a discussion of the challenges of the Catalogue Raisonné and an informative lecture on appraising old master drawings.

Jacqueline Berg, an appraiser-in-training and independent art researcher who assists with our authentication service, introduces our readers to the delightful Anne Coffin and her organization, the International Print Center New York (IPCNY).

Jack A. Josephson, mentioned above as our chairman and also a scholar and collector of Egyptian antiquities, argues the impact of collecting on the destruction of cultural property.

Carla Shapreau, an art law and intellectual property attorney with Giancarlo & Gnazzo in San Francisco, California who has written for *IFARreports* on cultural property law, examines a Ninth Circuit decision involving the salvage of shipwrecked gold.

We've saved the best for last. Veteran readers of *The New Yorker* will recognize the style of **Joseph Farris** in the drawing on page 25. *The New Yorker* has published Mr. Farris's cartoons throughout the last four decades, and we are excited about having him draw for us. Mr. Farris is also an award-winning painter.

We also extend a special thank you to our designer, **Bob Kowkabany.** A writer, publisher, and former colleague of this editor, Mr. Kowkabany guarantees painless magazine production.

Letters to the Editor

Interested readers are encouraged to send letters to the editor for publication. We welcome your comments and suggestions about this issue.

Manuscript Submissions

We are actively soliciting manuscripts for publication in *IFAR Journal.* Articles should be 1,000 to 1,800 words and may be accompanied by two to four black and white photos of excellent quality. Authors must obtain permission to publish photos from the appropriate sources before submitting articles to IFAR. We will not accept slides or transparencies. Send manuscripts to Editor, *IFAR Journal*, 500 Fifth Avenue, Suite 1234, New York, NY 10110.

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KATHLEEN FERGUSON

Mary Magdalene: The Royal Predilection for Her Image

THE SEPTEMBER 1996 issue of *IFARreports* featured an article, "Magdalen—A Popular Image of the Saint," that brought a California dealer's attention to a work he owned and had been led to believe by a curator in a California museum was a genuine work by the artist Pompeo Batoni (1708–1787). The article prompted him to submit his painting to our Authentication Service with the thought that it might be the Batoni portrait of St. Mary Magdalen missing from the Dresden State Picture Gallery, Dresden, Germany since 1945—having been either destroyed during an air attack on February 13, 1945 or lost since the end of World War II. The provenance of his painting includes information that it had belonged to a German officer who offered it for sale at Philips Fine Art Auctioneers in 1947. This made him anxious to have the work researched by IFAR and examined by Edgar Peters Bowron, the acknowledged expert on Pompeo Batoni's oeuvre.

The painting depicts the saint lying on her stomach reading in her grotto. Her blond tresses curve over her naked shoulders and breasts as her chemise slips untended from her body. The painting holds not a trace of her usual piety and contrition. Two of the attributes usually associated with St. Mary Magdalene, her bible and a human skull, are present.

Pompeo Batoni (1708–1787) was born in Lucca, and while his portraits of young British noblemen traveling in Rome on the Grand Tour had the most dramatic effect on his career, the Magdalene was the painting most actively responsible for his fame outside Italy in the eighteenth century.[1]

[1] Clark, Anthony M., *Pompeo Batoni*, Oxford, U.K., 1985, pp. 226, 227.

IFAR began by researching the painting in the photographic collection at the Frick Art Reference Library. We found a photograph of a work by Pompeo Batoni with a similar composition titled "The Penitent Magdalen" painted in 1742 with the recorded measurement of 47 5/8 × 74″ and the notation that it had been in the collection of the State Picture Gallery in Dresden, had probably been painted for Count Cesare Merenda of Forlì, had been in Dresden since 1754, and was either destroyed during an air attack on February 13, 1945 or lost since the end of World War II (Figure 1).

Figure 1 Pompeo Batoni, *The Penitent Magdalen.* (Formerly in the Dresden State Picture Gallery. Missing since 1945.) Oil on canvas, 47 5/8 × 73 3/4″. Reproduced by permission of the Dresden State Picture Gallery, Dresden, Germany.

The important difference between our work and the one missing from Dresden was its size, and although ours is similar in its pictorial content and iconography, there are many differences in the skill and manner in which it has

been painted. The painting under IFAR'S consideration shows the Magdalene's arms and clasped hands rather uncomfortably propped in an improbable way upon the rocks in her cave. The draperies are not skillfully painted, and there is nothing of the deeply reflective, penitent expression that is so moving in the work by Batoni.

In order to place the missing Magdalen in Batoni's oeuvre and to investigate our copy more fully, we consulted the Catalogue Raisonné on Batoni written by Anthony M. Clark and edited and prepared for publication after Mr. Clark's death by Edgar Peters Bowron. We found the listing for the original painting there titled "St. Mary Magdalene." The provenance was listed as the Merenda family, Forlì, and the collection of Augustus III of Saxony in Dresden in 1754. It was noted also that the picture was destroyed by fire on February 13, 1945 at the Dresden State Picture Gallery.

We then wrote to Edgar Peters Bowron, whom we believe to be the most knowledgeable Batoni expert. Mr. Bowron wrote: "On the basis of the photograph, I can say with certainty that the painting is not by the hand of Pompeo Batoni (1708–1787) but is in fact a copy, probably of the nineteenth century, of the painting once at Dresden. The handling of the paint is not at all like Batoni's and one may presume that this is one of the many anonymous versions made after this famous painting."

IFAR feels satisfied that its research on this work is complete, due to Mr. Bowron's absolute certainty with regard to the painting under our consideration, and that the decision will follow the painting, thus avoiding any confusion that might arise in the future regarding its authenticity.

The fact that Pompeo Batoni's "St. Mary Magdalene" was painted for Count Cesare Merenda of Forlì, Italy, and that it subsequently belonged before 1754 to Augustus III, Elector of Saxony and King of Poland, makes it part of a tradition begun in the sixteenth century of "Magdalenes" that were painted for a courtly clientele interested in works that were particularly suited to worship in their private chapels, ducal apartments, and studioli.

Their taste reflected, among other influences, that of Baldassar Castiglione's *Book of the Courtier*.[2] Castiglione, a courtier in the service of the Duke of Urbino who participated in the literary and intellectual activities of that illustrious Renaissance court from 1504–1516, wrote with extraordinary sensitivity and perception a series of imaginary conversations between its principal members. Published in Venice in 1528, *The Courtier* stands as a compendium of Renaissance thought, and although it touches up history and its prose can seem inflated, it has gone through scores of editions and translations and thus exercised a profound influence on European sensibilities and a pervasive influence on Elizabethan England, where the first translation appeared in 1561 at a time of intense interest in Italian life and literature. The kind of behavior recommended to the Italian courtiers became the accepted standard for English gentlemen.

In *The Book of The Courtier*, woman became the subject of treatise after treatise. "Women do not distract," it said, "but rather awaken our minds, and in war they make men fearless and daring beyond measure." Woman became the subject of dialogues of a superficially philosophical nature, and discussions of her beauty and virtue became courtly pastimes. Feminine beauty was said to engender rapture in the lover and foster in him the desire for God. Woman's comportment and relationship to men were the topic of earnest dialogue in the palaces and gardens of illustrious women like Caterina Cornaro and in the palaces of duchesses. Topics such as the spiritual nature of love led to earnest discussions and debate night after night until dawn overtook the eloquence of the participants.

In the Fourth Book of *The Book of The Courtier*, a discussion of the power of love led to a reference to St. Mary Magdalene with the quotation from Luke vii, 47: "Many sins are forgiven her because she has loved much," and an allusion was made to the pious tradition that she was uplifted by angels during prayer.[3] The Magdalene became the embodiment of the miracles that love could work and assured her position as the god-

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[2] Haskins, Susan, *Mary Magdalen*, Riverhead Books, New York, 1993, pp. 232, 233.

[3] Castiglione, Baldesar, *The Book of the Courtier*, The Penguin Group, London, 1967.

dess of love or "Venus of Divine Love" so often described in the wealth of literature devoted to her in the sixteenth and seventeenth centuries.[4]

Giorgio Vasari (1511–1574) wrote of having seen in the Guardaroba of the Duke of Urbino in 1548 "two female heads by Titian and a half-length of Santa Maria Maddalena with disheveled hair, which is likewise very beautiful."[5]

This "Maddalena" was commissioned by Federico II Gonzaga for Vittoria Colonna and her mother, the marchesa del Vasto, and became the prototype of the images of the Magdalene of the latter half of the sixteenth and seventeenth centuries. In the hands of lesser artists, the saint's portrait became little more than another portrait of a beautiful woman. A poor copy of the Pitti "Maddalena"is in the Prince of Wales' Presence Chamber at Hampton Court, and another even feebler copy is in Queen Mary's Closet, also at Hampton Court.

The courtly taste for the Magdalene image, with all its voluptuous beauty and suggestiveness, became an irresistible manner in which the seventeenth and eighteenth century court lady wanted to see herself portrayed. Primarily in England and France, this new genre of painting "the saintly portrait" was enthusiastically sat for by king's mistresses, duchesses and other aristocrats, artists' wives, mistresses, and daughters. The paintings of Mary Magdalene by Guido Reni, Annibale Carracci, and Gentileschi, which were in turn based on prototypes by Correggio and Titian, provided the basic formula for many of the "saintly" portraits. Penitence had little to do with the motives for the sitters' desire to be immortalized as Magdalenes, and for the Restoration court of Charles II particularly, the saint's image was adopted merely as an irreverent joke or as yet another fancy dress, alongside the shepherdesses, goddesses, virtues, and other allegorical figures these predominantly upper-class women chose to portray.[6]

Sir Peter Lely (1618–1680) and Godfrey Kneller (1646/9–1723), his successor as principal painter

Figure 2 Robert Walker, *John Evelyn,* 1648. By courtesy of the National Portrait Gallery, London.

to Charles II, painted many court beauties including Louise de Keroualle, Duchess of Portsmouth, Henrietta, duchess of Marlborough, Martha Blount, and Lady Wyndham. Louise de Keroualle, of all seems neither the penitent nor the Magdalene as she sits staring out at the viewer naked to the waist in her 1670 portrait.[7]

This was not the first period in which noblewomen had been portrayed as the Magdalene. In the late fifteenth century, Jan Gossaert (1478–1536) painted Isabel of Austria in this guise, and women whose names were Mary Magdalene have been portrayed either as or with their name saint. In Hugo van der Goes' 1475–6 Portinari triptych, Mary Magdalene stands behind Maria Madalena Baroncelli, wife of the donor Tommaso Portinari.[8]

In 1791 the Prince of Wales commissioned George Romney (1734–1802) to paint his own and Nelson's former mistress Lady Emma Hamilton as Mary Magdalene. A woman of considerable beauty, Emma was a born model with an instinct for posing in character. Romney painted

[4] Haskins, Susan, *op. cit.*, pp. 233, 234.

[5] Vasari, Giorgio, *Lives of the Painters*, Vol. V, Henry G. Bohn, London, 1852.

[6] Haskins, *op. cit.*, pp. 291, 292.

[7] *Ibid*, p. 294.

[8] *Ibid*, pp. 291, 292.

her in an unusually long list of guises ranging from the the frivolous to the sublime—from "The Straw Hat" to "St. Cecilia." The portrait of her as the penitent has her gazing soulfully up to heaven in a simple muslin dress with her head propped upon her arm and her hourglass and book by her side. All this innocence and innuendo engendered invitations from the Prince to dine with him. An infuriated and fiercely jealous Romney forbade Emma to visit His Royal Highness, but the placid Sir William Hamilton remained unperturbed by the invitations and seemed to have no objection to her relationship with Romney.[9]

Posing as perhaps the oddest repentant Magdalene must have been an irresistible idea to the seventeenth-century English diarist John Evelyn who had himself painted as the penitent in 1648 by Robert Walker (1607–1658) for a portrait to accompany a treatise on the ethics of marriage to his new bride, Mary Browne, the daughter of the British ambassador to Paris (Figure 2). A satin cloak thrown over his shoulder partly conceals his undone chemise, and his fingers rest over the forehead and eyes of the skull, the symbol of mortality and an attribute of the Magdalene placed before him. The Greek lettering above his head reads: "Repentance is the beginning of wisdom." The message on the piece of paper under the skull comes from a letter "Epistle XXX" written by Seneca to Lucilius, and the words have been deciphered to mean "but, when death comes to meet him, no one welcomes it cheerfully except the man who has long since composed himself in death." Surely this portrait must have been, at the least, confusing to the bride he had married the previous year but left with her parents due to her extreme youth.[10]

Seventeenth-century French court ladies including several of Louis XIV's mistresses were painted as "Magdalenes." The fashion continued into the eighteenth century when Jean Marc Nattier (1685–1766) painted in 1742 his portrait of Louise Julie de Nesle, Comtesse de Mailly. The

Figure 3 Jean Marc Nattier, *La Madeleine or une Penitente dans le desert* (Mme de Mailly?), 1742. Oil on canvas, 0,71 cm. × 0,77 cm. Musée du Louvre, Paris.

portrait "A Penitent in the Desert" (Figure 3) was commissioned from Nattier by Madame de Chateauroux, the sister of Mme de Mailly, who commissioned it for her room—doubtlessly with some irony as she succeeded her sister in the favor of Louis XV, who paid for the portrait. Mme de Mailly has been described as having had "a long nose, a sallow complexion and graceless arms." She had a friendly manner, however, without pretense or political ambition, and presented no threat to anyone at court. Having taken her role as the Magdalene quite seriously, she withdrew from society after her downfall and living on a royal pension, played the role of the repentant Magdalene for the remainder of her life. Madame de Mailly's portrait, now in the Musee du Louvre, was first listed in Jeaurot's inventory in 1760 of the royal collections of Louis XV.[11]

At least one prominent American family has shown a taste for the image of the penitent Magdalene. It can be seen hanging in the "Snuggery" of Sara Delano Roosevelt, mother of President Franklin D. Roosevelt, in their family home in Hyde Park, New York. The curator and registrar

[9] Ward, Humphrey and W. Roberts, *Romney: A Biographical and Critical Essay*, Vols. I and II, Thomas Agnew and Sons, London; Charles Scribner's Sons, New York, 1904.

[10] Haskins, *op. cit.*, pp. 297–98.

[11] Exhibition: Orangerie des Tuileries, le Portrait Francais de Watteau à David, December, 1957 to March, 1958, pp. 50, 51.

there said that there have been questions in the past about the painting, a copy of the Correggio Magdalene, and that there are no detailed records of how it came into the possession of the family, but it is believed that it was bought by James, the President's father, and Sara on one of their trips to Europe.

Secular taste and royal influence have forever altered the image of St. Mary Magdalene, the weeping penitent who inspired a wealth of art literature and debate.

CLARA GRAZIANI BRONSON

The French Law of Experts: A Corrected View

IT IS NOT OFTEN that a generally assumed legal concept is dismissed as plain wrong. It seems precisely that occurred on December 10, 1997 at a symposium sponsored by the International Foundation for Art Research (IFAR) at The Williams Club in a program, "The French Law of Experts." The panelists had been carefully selected for their knowledge and practical experience with the subject. They were Joseph Baillio, Vice President, Wildenstein & Co., an expert in 18th-century painting who is involved in writing three catalogues raisonnés; Hermine Chivian-Cobb, an appraiser and private dealer who was at Sotheby's for ten years and in charge of the Drawings Department; and Van Kirk Reeves, who has practiced law in Paris for approximately thirty years, specializing in art law. I acted as moderator of the panel.

The symposium had been prompted by the 1995 decision in the Federal Court, Southern District, New York, entitled *Greenwood v. Koven* (880 F. Supp. 186 S.D. N.Y. 1995). In that case, Christie's had been consigned a pastel purportedly created by Georges Braque. The consignor had inherited the pastel from her father, who had acquired it in 1948 from A.P. Rosenberg & Co. for $1,400. Christie's two specialists, Franck Giraud and Michael Findlay, examined the item, and both concluded that the pastel was an authentic work by Braque.

At the 1990 auction, Barbaralee Diamonstein, who had seen the pastel on exhibition in New York, left instructions with Giraud to bid up to $600,000. Diamonstein was the high bidder at $600,000 and paid the purchase price.

Following her payment, Diamonstein raised questions about the work's authenticity, and Christie's, to reassure her, obtained documents from Koven, the consignor, and Elaine Rosenberg, the widow of Alexandre Rosenberg, who had owned the Rosenberg Gallery. Rosenberg confirmed that the pastel had been purchased from the Rosenberg Gallery, and Christie's further assured Diamonstein that it had no doubts about the authenticity and that it guaranteed the authenticity of everything it auctioned.

Diamonstein was still not satisfied. She "demanded" that Christie's provide her with a written verification of the work's authenticity by a "scholar." Although Christie's continued to believe that the pastel was authentic, to satisfy Diamonstein, Christie's consulted "the expert" it believed was the appropriate person. That person was Claude Laurens, who was consulted through his son Quentin Laurens. Claude Laurens, who had been Braque's friend, had been granted Braque's "moral right" (*droit moral*), which, according to Judge Charles Haight, "Includes the right to authenticate which works are done by the artist." Christie's had the pastel sent to France, where it could be examined by Quentin Laurens. Christie's believed that Quentin, rather than Claude, would be appropriate, after having

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This article appeared in *The Appraiser*, First Quarter, 1998.

received a letter from the President and Director of the Georges Pompidou Museum of Modern Art, stating that the authentication of Braque's works "have been accomplished (in agreement with his father) by Quentin Laurens, only son of Claude Laurens."

On January 10, 1991, Quentin Laurens informed Christie's that he did not believe the pastel to be the work of Braque and that a certificate of authenticity would therefore not be issued. As a result, Christie's rescinded the sale, refunded to Diamonstein the purchase price, and sought the return of the sale proceeds from Koven, who refused the request. Consequently, Christie's, under its errors and omissions insurance policy, obtained reimbursement from the carrier, who commenced the subject suit against Koven.

The Court held that under the relevant consignment agreements between Koven, as consignor and Christie's, and the related agreement with the purchaser, Christie's had the right to rescind the sale if it might be "subject to any liability, including liability under warranty of authenticity . . ." Thus, since Christie's in good faith believed that it might be subject to such liability by a suit by Diamonstein, it could rescind the sale and obtain recovery from Koven, the consignor.

The issues before the IFAR panel related to the power of the person holding the "moral right" under French law to authenticate the work of a deceased artist. I think it fair to state that the New York Bar assumed that the person holding the "moral right" under French law had this right.[1] This was independent of whether the right was exercised correctly. Could Claude Laurens, who was elderly and known to have poor eyesight, effectively exercise that right; and perhaps even more significantly, could his son, who could have had no independent idea as to whether Braque executed the pastel, be able to authenticate it.

This assumption was wrong. As pointed out by Mr. Reeves, moral right under French law does *not* include the right to authenticate a work. He pointed out that under French law anyone can be an "expert" or hold himself out to be one; a person does not have to be the possessor of the "moral right." If there were an authenticity issue in a French court, the court would select an "expert" from a list of experts who would then consult with such person or persons as he or she wished and then advise the Court. It would be the Court which would, as a result of such advice, determine if the work were authentic or not.

Hermine Chivian-Cobb and Joseph Baillio did not disagree with that conclusion. Ms. Chivian-Cobb pointed out that the outcome might have been different if Christie's had consulted an expert prior to the sale and that provenance alone is not a guarantee of authenticity.

The conclusion that Reeves expressed is consistent with an article that he co-authored in 1985 on Moral Right.[2] In that article, Reeves and his co-authors identified four distinct rights which comprise the French concept of moral right, no one of which is the right to authenticate an artist's work or assign to another such a right. The rights which are included are "the right to reconsider or withdraw," "the right of disclosure," the "right of paternity" (the right of an artist to have his name associated with the work), and the "right of integrity" (the right to oppose all unauthorized modifications).

One other canard, often heard in New York, is that the person with the moral right has the right to destroy the work if he is of the opinion that the work is not authentic. Reeves pointed out that a destruction of a painting as a work of art can only be authorized by a court after an appropriate application. Although this may not reduce the risk, it would appear that such an application—and thereby eventual destruction—could not be made simply by a person claiming to have the "moral right," unless a court determined that his opinion was the one on which the court relied on its finding of inauthenticity.

One basis on which the expert—whether he be the possessor of the "moral right" or a credi-

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[1] This assumption still exists today by persons other than lawyers. See Steven Vincent, "Duped," in *Art & Auction*, February 1998, on p. 82, "Further clouding matters was Man Ray's widow, Juliet, who, by virtue of the French Statute of 'droit moral' became the primary authenticator of Man Ray's oeuvre after his death."

[2] Reeves, Bauer, and Lieser, "Retained Right of Authors, Artists and Composers under French Law on Literary and Artistic Property," *The Journal of Arts Management and Law*, Vol. 14, No. 4 (Winter 1985).

ble expert—supports his opinion is the archives of the artist. Does the work in question appear in the archives? If there is no written record in the archives, the conclusion must be negative.

It is submitted that this is a troublesome basis on which to form an opinion. Archives are never perfect. No artist or scholar is free from overlooking a defect in the written record. There are errors in the catalogues of even the most thoroughly documented artist in recent years, Picasso. For example, the comprehensive catalogue of Brigitte Baer and Bernhard Geiser which records the printed work of Picasso has a number of errata. In my opinion, the educated eye[3] is still a better test of the authenticity of a work than a written record, which may contain innocent or not-so-innocent errors.

Furthermore, it is clear that the holder of the moral right or even a close family member can be wrong with respect to authenticity. Chivian-Cobb pointed out that some years ago at Sotheby's a drawing was submitted for authentication to the son of a prominent artist, who advised that the drawing was not by his father. He only changed his mind on seeing a photograph she discovered of the artist with the drawing in question.

Indeed, as paradoxical as it may seem, the artist himself may not be the final arbiter, at least as to works he claims he did not create. There are incidents, only some of which are apocryphal, which report that artists have denied the authenticity of works that they have undoubtedly created, perhaps in their youth. The current state of paternity in art has still not developed a DNA equivalent as exists in family law.

It would appear that paradoxically recent developments in the United States which attempted to adopt the civil law "moral right" doctrine may have proceeded on a false assumption. Those behind these legislative enactments may have assumed that, for example, the French concept of "moral right" includes the right to authenticate or deny authentication to a work of art. Thus, in California, the first state to enact a prototype of a moral right statute in 1979, it is provided that the "artist shall retain at all times the right to claim authorship, or, for just and valid reason, "*to disclaim authorship of his or her work of fine art*" (emphasis added). The California statute provided that this right exists and can be exercised by his heir, legatee, or personal representative until fifty years after the artist's death.

Similarly, when New York in 1983 enacted its version of the moral rights provision, it provided that a comparable right existed—namely, the right to claim authorship or "for just and valid reason, to disclaim authorship of such work." In contrast to the California statute, however, the New York statute does not have a provision which states that the right survives after the death of the artist. It is simply silent on the subject.

More recently, at the Federal level, the Visual Rights Act of 1990 provides that the artist shall have the right "to claim authorship of the work and to prevent the use of his or her name as the author of a work of visual art which he or she did not create." The Federal statute further provides in one section that "only the author of a work of visual art" has such a right, and in another, that with respect to works created after the effective date of the Act the rights conferred "shall endure for a term consisting of the life of the author."

Thus, under the New York and Federal statutes, the right to authenticate belongs solely to the artist; under the California statute, it appears that the artist's right can be exercised by a representative for fifty years following the artist's death. Accordingly, except for California, it would appear that the New York and Federal statutes do not effectively grant a right of authentication to anyone but the artist.

Although the *Greenwood v. Koven* case may not have been incorrectly decided, because it rested on the Court's analysis of the relevant consignment agreement, it would appear that its reliance on the view of the person with the moral right, or indeed that of his son, was misguided. The decision does, however, demonstrate that the framing of the issue often determines the result in litigation. In this case, Judge Haight framed the issue in terms of simple contract law: under the two relevant agreements (one between the consignor and Christie's and the other

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[3]Compare the comment of the art dealer Virginia Zabriskie in the Vincent article (*op. cit.*, on p. 83), "It goes to show that when authenticating Man Rays, the eye is not enough—you must check provenance." It is obvious that provenance itself can be misleading, both as to authenticity and title.

between Christie's and the buyer), did Christie's have the right to rescind the sale when it had determined in its sole judgment that it might be subject to liability as a result of the sale.

The Court could have framed the issue differently. The issue could have been stated: To whom does Christie's owe a greater duty—to the consignor or the buyer when a disputed question of authenticity arises; and as a corollary, who has the burden of proof to determine authenticity. If the issue had been framed that way, it is clear to me that the consignor would have prevailed. First, the painting had an impeccable provenance; it had been acquired by the consignor's family from a prominent gallery who dealt directly with the artist. Second, Christie's own experts believed the work to be genuine. Third, Claude Laurens did not have the physical capacity to examine the work, and his son was probably not alive, or at least was an infant, when the work was created. Fourth, an auction house is generally assumed to be the agent of the consignor, its principal, rather than that of the buyer; and finally, a plaintiff would almost always have the burden of proof, not the defendant.

It is rare that a symposium of this nature changes the understanding of persons familiar with the subject under discussion. The December 10, 1997 symposium appears to be that rare exception. It presented information which appeared to contradict what had been generally assumed—that under French law the person in possession of the moral right of an artist has the right to authenticate the work or perhaps even to destroy it. After December 10, 1997, that assumption should be put to rest.

Franklin Feldman

Panel Takes on "Challenges" of the Catalogue Raisonné

A DISTURBING TREND has developed in the compilation of the catalogue raisonné. Traditionally, the research for this document, literally translated as a reasoned catalogue of all the works of an artist, has been reserved for the most meticulous of scholars. Lately, however, some of these documents have been compromised to satisfy the unsavory aspects of the art market. In response to recent questionable practices in the compilation of certain catalogues raisonnés, Constance Lowenthal, former Executive Director of IFAR, moderated a panel discussion in January on the ethical challenges involved in the production of the catalogue raisonné.

The panel, presented at the National Academy Museum, included representatives from every key group involved in the use and production of a catalogue raisonné. Michael Findlay is International Director of Nineteenth and Twentieth Century Works of Art at Christie's. Wolf Kahn, NA, is a noted landscape painter. Frank Martucci is the sponsor of a forthcoming catalogue raisonné on George Inness researched by Michael Quick. Aimee Brown Price is an art historian who is completing a catalogue raisonné and monograph on Pierre Puvis de Chavannes. The group and subject attracted an interested audience of lawyers, students, scholars, journalists, and dealers.

According to the discussion, the main issues in the construction of a complete, analyzed listing of all genuine works by an artist are: who is the cataloguer; what works are included; what is the role of the artist's family; and who ultimately decides if the resulting product has merit? The discussion of these issues was interwoven with ethical concerns that have arisen from the art market's involvement in the production of some catalogues and how to resolve those concerns.

Everyone interested in the work of an artist benefits from a well-reasoned catalogue of his or her creative output. Mr. Findlay noted that the "art trade could not exist without the catalogue raison-

né" and that the market uses them as "bibles throughout the working day" often referring to paintings by their corresponding number in a given catalogue. He credited the established catalogues with providing the joy of knowing what "the market collectively considers to be good, true works." But, he lamented the existence of "catalogues raisonnés manqués," in which interested parties paid fees to insure that dubious works are included. These less-than-legitimate catalogues create an environment of "constant litigation and battles over degrees of authenticity," he said.

As a result, Mr. Findlay stressed that "catalogues raisonnés must be spotless and as free of human error as possible." The problem, however, stated by those involved in these projects is that the work is not an exact science. Even the most reputable and diligent cataloguer may have to rely at some point purely on his or her judgment, especially if the artist has been deceased for some time. But as researchers become enmeshed in the process, which can span decades and even entire careers, they develop the connoisseurship required to make such distinctions. In the end, these self-made experts may possess the most reliable opinion on the artist's work.

Ms. Price sees her discipline not simply as collating, but as a "broadening endeavor" whereby she "sharpens her sensibility" and is allowed to "see the range and possibility of the artist." The value of such a document from Ms. Price's scholarly perspective is that it is the basis of understanding the artist and his reception at different times in history. Even in the dry information of the typical entry, such as title and signature, what is said and unsaid can have interesting implications for the work and the artist. Ms. Price calls the exhibition history a "history of taste." In the publication history, "chronological clustering" helps indicate periods when audiences found particular meaning in the artist's work.

The compiler of the catalogue raisonné, typically an acknowledged expert on the artist, can be anyone from the artist himself to a full panel of scholars. The cataloguer should not be anyone who may have a perceived conflict of interest. When Ms. Price is asked to authenticate works, she donates her fee to the Frick Art Reference Library. Mr. Martucci, who became involved as the sponsor of the George Inness catalogue through his interest as a collector, is "sensitive to the taint involved" and said he will donate the Inness works he currently owns and not make purchases based on his experience as sponsor. He has started a foundation in order to finance the catalogue. Mr. Findlay confirmed that "obvious problems" arose from Christie's sponsorship of a catalogue raisonné for Mary Cassatt, including the opposition of rival firms who were also handling her art. While there are dealers who sponsor publications without immediate return, Mr. Findlay warns of "some venal dealers seizing on artists, trying to make a market."

As cataloguers, artists and their families may not be the best choice, because they could be tempted to edit out weaker work in order to present their oeuvre in the best light. Artists can also decide to disown objects with a complicated history, much to the chagrin of their collectors.

At seventy-three years of age, Mr. Kahn said he was just beginning to appreciate the value of cataloguing his own work. During the early years when artists are developing and "most interesting from an art historical point of view," Mr. Kahn noted that most are not thinking about documenting their work. It is only after the prices rise and mortality becomes inevitable that many artists begin an archive. Mr. Kahn mused that discerning art historians who entered his studio might be a "wonderful sanitation squad, who wouldn't sign your name to junk."

Other pressures on artists can complicate attempts to document works that they obviously executed but may not want to claim as their own for personal reasons. According to Mr. Kahn, Georges Rouault, who died in 1958, burned many of his works very late in his life so that his family would not have to carry the burden of French estate taxes. Mr. Kahn also mentioned an instance where an unnamed artist refused to acknowledge his drawings of a model who had taken them from his studio after her dismissal. Since the reason for the model's departure was the discovery of the artist's affair with her by his wife, the reemergence of these drawings brought back uncomfortable memories. In explaining his refusal, however, the artist said "everything I approve of is signed" and that he "did not like the hand in it." Mr. Findlay added that Maurice Utrillo used some paintings to pay debts he had

hidden from his wife and later needed to deny their authenticity.

Unfortunately for artists who may not like all of their works for one reason or another, Ms. Price said that her goal as a cataloguer was "exhaustive" and that "no aesthetic judgments" prevented her from including works that she knew in fact were by the artist. It is not her role to "evaluate works with our own present taste," she noted. Mr. Martucci and Mr. Quick have stricter criteria. If fifty to sixty percent of the canvas has been conserved with overpainting, they plan to exclude it in their forthcoming catalogue. Mr. Findlay believes that the market wants to see everything the artist did in such a document—"good, bad, or indifferent"—but acknowledged that conservation "muddies the waters." For those who argue for inclusion of such works, condition reports help to clarify how much of the artist's hand is still present in the work.

With rumors of collectors bidding to place expensive color photographs of their possessions in catalogues raisonnés and unscrupulous dealers sponsoring scholars, the process by which authenticity is determined has become somewhat clouded. The financial pressures on scholars and the expense involved in creating a publication give rise to this ethical vulnerability. Collectors may also threaten to sue the cataloguer who does not include their artworks in the final document. According to Mr. Martucci, he and Mr. Quick will carry liability insurance while the catalogue is being produced and for some time after it is published to protect themselves until their work becomes established. Lloyd's of London was the only insurer willing to cover them, and he is not certain whether the firm will continue the practice in the future.

How effective is one person in making these decisions or, as Stephen Vincent from *Art and Auction* asked, "Who vets the vettors?" Panels were not encouraged as catalogue creators, but they may have a purpose in evaluating a finished product, judging from the participants' responses. Mr. Findlay preferred "a panel of scholars lending credibility and strength" to their decisions over one arbiter. But he and Mr. Kahn pointed out instances where a "panel of eyes" proved no better in asserting unequivocal authenticity than the judgments of one expert. Ms. Price would prefer to work alone, choosing the people with whom she wished to discuss problems rather than working with a mandated committee.

In terms of working with family members, Ms. Price said that the kindness of her subject's family "had been crucial to her work." But there was a "far-flung branch" of the Puvis family who had bought suspicious work that they assumed were by the artist. Since the family's name was now in the provenance of these works, it gave an air of credibility not supported by their quality and created a great deal of confusion. Ms. Price said while the situation was "very puzzling," it was "not unusual." Another cause for conflict is when family members become experts "or less so" and begin to authenticate works for the market.

In the end, a catalogue raisonné becomes established through time and scholarly consensus. Ms. Price listed the "seriousness of intent, time, intelligence, eye, reputation, and probity" of the scholar as some of the criteria by which the catalogue is evaluated. The document is rarely "closed," however, and may require addenda or revisions as new works and information come forth and other works are denied a once favorable attribution. The idea of issuing these texts on CD-ROM was mentioned as one way to deal with the continual process of revising them.

What is the future of the enterprise? Ms. Lowenthal deemed it a "noble calling" that was not currently emphasized in graduate school. Ms. Lowenthal suggested that the popularity of gender-based and Marxist reinterpretations of past movements has diluted connoisseurship within the study of art history. According to its treasurer, Nancy Matthews, the Catalogue Raisonné Scholars Association of the College Art Association can no longer afford to send out its newsletter. Ms. Matthews said the association would need to increase membership or increase dues to continue its functions, which include establishing ethical guidelines and examining the role of computers in their discipline.

For those undaunted by the lack of popularity of the avocation, other challenges remain. Efforts to catalogue the production of many twentieth-century artists will be confounded by ephemeral and conceptual pieces that may not yield surviving records. If the work no longer exists, does it need to be archived and how can

this be done? Ms. Price responded that the catalogue raisonné was "not just to be used as an apparatus of the commercial art market," and while the methodology was "demanding, it doesn't mean that it shouldn't be done." Mr. Findlay thought the challenge to a new generation of art historians would produce a new organizing principle and that "how we imagine a catalogue raisonné is not how it has to be."

JENNIFER LANDES

IFAR's New Neighbor: International Print Center New York

UNTIL LAST OCTOBER, IFAR shared its Fifth Avenue office space with the Art Loss Register. Following the ALR's move to separate quarters, IFAR conducted a careful search for a new tenant. The space has now been leased to a most fortuitous neighbor, International Print Center New York (IPCNY). This newly founded nonprofit organization is devoted to promoting the greater appreciation of the fine art print worldwide.

The founders of IPCNY and the director, Anne Coffin, are passionate about the print medium. Their interest is multifaceted and thoughtful, moving beyond aesthetics to an understanding and appreciation of the collaborative process of printmaking, to the diverse, ever-evolving techniques, and to the historical tradition and growth of the medium. Although artists have engaged in printmaking for over five centuries, Ms. Coffin remembers a particularly charged period during the early 1960s when American artists began to take printmaking very seriously. A number of intertwining factors fueled a reinvigoration of the field: favorable economic conditions, artists with a distinctly graphic sensibility, and a growing art-buying audience in search of affordable works. Soon the number of printmakers and publishers increased dramatically, and the medium began to stand on its own as an autonomous art form.

Ms. Coffin realized in the early 1990's that despite a vital community of working printmakers, a devoted viewing public, and many collectors, there was no major institution devoted solely to the print medium. This apparent gap led her to found IPCNY in 1995 from her home. The first step, she says, was to identify founding trustees and advisers who would help in defining the concept and program for the new institution. She has been extremely fortunate in attracting a group of people of great talent and varied experience in the field to guide IPCNY in its early days. Their collective vision of IPCNY bears similarities to that of two other institutions, the International Center for Photography and The Drawing Center. The new center will serve artists, publishers, collectors, curators, dealers, students, and any other interested party by fostering the study, examination, and enjoyment of artists' prints. This mission will be enacted through a three-tiered program of exhibitions, a new prints program, and an information center. Now, with its new, central location on Fifth Avenue (conveniently across from the New York Public Library), the organization is beginning to actualize its goals. However, until IPCNY has a large exhibition space of its own, the exhibits will be shown in appropriate locations off site, and the information center will be established in the new office space on Fifth Avenue.

The Board of Trustees and members of the Advisory Council already have been meeting for a couple of years to lay the foundations for IPCNY's programs. Each season will feature four to six exhibitions spanning the geographical and historical range of printmaking. All of these exhibits will be complemented by a catalogue, lectures,

Susan Rothenberg, *Dead Rooster #4*, 1993. Woodcut. 22 15/16 × 29 3/16". Edition: 100. Publisher: Brooke Alexander Editions, New York. Donor: Diane Villani Editions. To be sold at Sotheby's auction to benefit IPCNY.

and educational events. To reach the greatest possible audience, IPCNY plans to circulate its shows among institutions interested in exhibiting prints. Furthermore, the organization hopes to collaborate on exhibitions with other institutions. The topic of the first major exhibit, which is scheduled for 2000, will be announced this spring.

In addition to the exhibition program, there will be an up-to-the minute program for displaying new prints. This program will offer the viewer an incomparable look at the most current contemporary prints chosen by the organization's New Prints Committee. To maintain the immediacy of the new prints, the display will ideally be rotated every three months, and no print more than one year old will be shown.

The other major facet of IPCNY will be its multimedia information center, comprised of a library, videos, computers, a website, and other resources. IPCNY has already established a presence on the World Wide Web through its website: www.ipcny.org. The site disseminates information on prints, presents IPCNY's programs, and contains links to other print-related websites. Those links connect with print departments of major museums, libraries, galleries, and publishers. In the physical information center, which will be located in the office, IPCNY is assembling a library of core reference works on printmaking. In addition, the center will maintain current art periodicals, newsletters, catalogues, gallery and publisher's announcements, exhibition, art fair and lecture schedules, and directories. Artists will benefit from the postings of fellowship, competition, and employment opportunities. Once the information center is fully established, visitors will be able to use the center's multimedia resources to view videos about prints and artists, to access the Internet and art-related on-line services through computer terminals, and to use CD-ROM databases such as Gordon's Print Price Annual. Not only will IPCNY collect and disseminate information, but the organization already has publishing plans of its own. While assembling the pieces in the information center, IPCNY's committee identified several areas of the print medium which have yet to be addressed in a published format. The possibilities are many, so Ms. Coffin will only say now that in general, IPCNY plans to publish works relevant for print collectors.

IPCNY has begun raising funds for its inaugural season with a Founding Member's campaign and a general membership drive. An ambitious target of $1.1 million has been set for the first three full seasons of operations. As of the end of February, IPCNY raised almost $150,000 from foundations, individuals, artists, corporations, and publishers.

IPCNY is fortunate in having been invited to participate as a beneficiary in two sales at Sotheby's. Last May Sotheby's New York conducted a benefit print auction with proceeds going directly to IPCNY. After the success of last year's sale, Sotheby's extended its commitment and will hold another benefit auction for IPCNY during its spring prints sale this year. The auction is scheduled for May 2, 1998. The sale will feature approximately 50 twentieth-century and contemporary prints, which is nearly double the number in last year's benefit auction. The donated prints have come from collectors, dealers, artists, galleries, and publishers from around the country and abroad. As some of the consigned works have been donated directly from publishers, the auction will be a unique opportunity to see and purchase brand new works.

As a result of IPCNY's shared office space with IFAR, Ms. Coffin is interested in ways that the two organizations can work together. One issue that clearly concerns both groups is that of

authenticity. As IPCNY begins to enact its programs, Ms. Coffin is devoted to exploring joint projects with IFAR.

Ms. Coffin, the other trustees, and the advisory committee have clearly defined the ambitious role of IPCNY. But as with any groundbreaking venture, despite all planning, each idea sparks another, and the program will surely evolve and flourish in unforeseen and unannounced directions. Ms. Coffin's competent leadership and abundant enthusiasm ensure IPCNY a distinguished and creative future.

For more information regarding IPCNY, memberships, and the forthcoming print auction at Sotheby's, contact Anne Coffin at: tel. (212) 302-7570; fax (212) 302-7507. Or write to IPCNY, 500 Fifth Avenue, Suite 1234, New York, NY 10110.

To purchase an illustrated catalogue for the Sotheby's auction, call (800) 444-3709; outside the continental U.S., call (203) 847-0465 or fax (203) 849-0223.

Jacqueline Berg

Appraising Drawings 101—Kathleen Harwood Gives the Basics for Beginners

The market for drawings—particularly Old Master drawings—is unique from paintings, furniture and any other category of fine or decorative art object. It is small, selective, conservative, and down-right secretive, according to Kathleen Harwood, a fine arts specialist of the late eighteenth to early twentieth century. How to determine authenticity and then value under these circumstances is very challenging but can be rewarding and exciting to an appraiser or anyone else trying to ascertain a drawing's quality.

Ms. Harwood, who appears regularly on "Chubb's Antiques Road Show," clarified the specific nature and character of the drawing market and helped explain why, for example, one Goya drawing could sell for $189,000 and another for only $68,000 during the January drawings auctions. She offered her expertise at a lecture presented by the Appraisers Association of America on February 2.

What makes drawings so different from other fine arts objects? Ms. Harwood said what strikes the viewer first is their immediacy and spontaneity, a result of the swiftness of execution. Most drawings, aside from highly finished presentation drawings, are produced in one sitting and express the creative process of the artist. Drawings are also typically classified as works on paper—whether they are executed in charcoal, pastel, or watercolor—and present unique conservation issues. In addition, due to their media, drawings have a predominantly linear character in comparison with paintings and other artistic expressions.

Ms. Harwood explained the different classifications of drawings, which include working and presentation drawings, tracings, and ceiling studies, as well as architectural, botanical, scientific, and theatrical drawings, such as set and costume designs. Experts also include the complete journals and sketchbooks of artists and book illustration among these categories.

Ms. Harwood also described a "pyramid of value" for a drawing that descends from the artist at top to subject, condition vs. rarity, and provenance at the base. In certain cases, the artist creates highly finished drawings that are considered exquisitely beautiful and are widely exhibited in their own right. These artists, such as Edgar Degas and Georges Seurat, actually create their own category separate from the regular drawing market. To a lesser degree, the drawings of other artists are considered by their individual quality and the artist's overall market value.

When considering subject, its completeness, importance, and location in the artist's oeuvre determine its value. Usually, the more typical

Francisco José de Goya y Lucientes (Spanish, 1746–1828), *A Hunter loading his Gun, accompanied by his dog.* 8 1/4 × 5 1/2″. Numbered "99" and with inscription "18." Brush and brown wash, fragmentary watermark M in coat-of-arms laid down on pink paper. Sold at Christie's.

subject generates the greater value. This was certainly the case for the two Goya drawings. The more expensive drawing, "A Hunter loading his Gun, accompanied by his dog," sold at Christie's and came from a famous album of ten sepia images of hunters that Ms. Harwood called "especially fine" noting the contrast of the white paper to the intensity of the wash. The other drawing at Sotheby's sold for less because of its subject, a copy after a print by British artist John Flaxman. "No one is sure why [Goya] did it," Ms. Harwood said, "and it was not of interest."

Sometimes even a typical subject misses the mark, however, such as a sheet of head studies by Sir Edward Burne-Jones, a nineteenth-century British artist, that failed to attract bids, because the heads were strained and almost grotesque in nature. At an estimate of $30,000 to $40,000, the drawing failed to attract bids because it was "close, but not what people actually want," according to Ms. Harwood.

The relationship of condition and rarity is inverse: the rarer the drawing, the less important condition becomes in determining value. Ms. Harwood considered the condition of a Michelangelo drawing "ratty," but that did not prevent Sotheby's from extracting a $6.8 million price in the January sale. Not only is the artist's appearance on the market rare, but the large size of the sheet is also exceptional.

The provenance can also be a strong factor in determining value, particularly if the work was once in a famous collection, but the quality of the work needs to justify a high estimate. In the case of a Rembrandt drawing sold in 1984, its previous presence in the Chatsworth Collection may have accounted for a 25–50 percent increase above the general market. A large, two-sided Corot drawing from an extraordinary French collection, however, was bought in by Christie's at $30,000, which Ms. Harwood describes as "still a fantasy." She believes the drawing's true worth probably lies in the $15,000 to $20,000 range.

Tips for Appraisers

Kathleen Harwood currently directs Harwood Fine Arts Inc., which provides appraisal and consulting services in many areas of art with a specialization in drawings. She has been employed at the Museum of Fine Arts in Boston and created the drawings department at Christie's. She is a Mid-Atlantic Regional Representative of the Appraisers Association of America and has taught in the Appraisal Studies Program at New York University.

When first confronted with a drawing, Ms. Harwood recommends that the appraiser ask the client: What do you think you have here? "What people think they have and what they actually have is usually very different," Ms. Harwood said. "But let them talk, because their responses provide valuable clues about its origins and provenance."

The next step is to request time alone to examine the drawing out of the frame. Ms. Harwood said "there is no substitute for seeing the drawing out of the frame." To assure an easy and nondestructive course of action, she recommends taking the right tools and offering assurances to the

owner that it will be put back together properly. Having time alone allows the appraiser to photograph the drawing and take extensive notes. A very full description of the subject matter, medium, and support, as well as condition is vitally important, especially if the photographs do not develop properly.

Ms. Harwood also recommends examining the drawing under magnification for indications that it might be a reproduction. Some warning signs are familiar subject matter, precise and even margins, and dot patterns or extremely regular and smooth surfaces. "Look for tiny printing such as a copyright or printer's name hidden on the sheet," she said. "If you're fooled, don't get embarrassed, it happens. But, take the time and precautions to prevent it."

Next, examine the sheet, mount, and front and back of the frame carefully for signatures, marks, and dates. Note the medium of the signature, if present. Look for dealer and exhibition labels, which are an important clue in ascertaining authenticity. Measure and make an accurate sketch to scale of collector stamps and note their color and location. These marks will provide meaningful provenance information, but are often faked, so it is important to reproduce them accurately so they can be compared with directories such as *Lugt*. In addition to alphabetical listings of collector's marks, these books also provide histories of studio sales and biographies of collectors.

An artist's studio stamp is particularly helpful when the quality of the drawing is not up to par. Ms. Harwood showed an Ingres "Age of Gold" preparatory study, "an otherwise scrappy drawing," that had the Ingres studio stamp. This stamp insures that the drawing "was in the studio when [the artist] died" and that "you know you are looking at an Ingres drawing." Although the drawing did not sell, the auction house gave it a generous estimate because of the stamp's presence.

Anyone who wants to further their knowledge of drawings must become familiar with the various media and how they look. This can be as simple as understanding the difference between gouache, an opaque pigment, and watercolor or as complex as knowing the paper of different eras. "A nineteenth-century drawing should have nineteenth-century paper," Ms. Harwood said, and if someone believes their drawing is on laid paper, "it should have wire marks." A transfer drawing will be squared to divide up or may have pinpricks for the ponce.

Ms. Harwood warned of another pitfall for the appraiser, the "counter proof" or a drawing pulled from another drawing. Counter proofs are "very common from French eighteenth-century red chalk drawings and are all over the market as originals." A sheet is placed over the original and run through a press. Although the artist's original is involved in the production, Ms. Harwood recommends thinking of the resulting derivatives as copies. Not only is the image in reverse, but the medium loses much of its surface, which is an important aspect of its condition. In essence "you have the image, but you don't have the drawing," she said.

The condition should also be noted as it can be an identifying factor. Things to look for include fading, yellowing, bleaching, surface losses and foxing—the brown spots on the sheet's surface that indicate mold, but can be eliminated through conservation.

After the drawing examination is complete, it is time to do some research. This includes consulting directories such as *Lugt*, the artist's catalogue raisonné if there is one, price records, and auction or exhibition catalogues. Through thorough research, it might be possible to find a painting to which the drawing relates. Ms. Harwood said that the homework must be completed before consulting an expert on the artist.

There is often a choice of experts on a given artist, ranging from the catalogue raisonné scholar to a curator of a recent exhibition. An auction house should be "the last resort, unless you're consigning it or know someone there." According to Ms. Harwood "they just don't have the time otherwise." Dealers, however, "are a wonderful source of information." Ms. Harwood recommends making the acquaintance of dealers in your field and making sure they understand who you are and that you are "not just picking their brain."

According to Ms. Harwood, old master drawings dealers are conservative and serve a small group of discerning buyers. Impressionist and modern drawings are easier in that they sell to a larger market and are considered more decorative and involve less connoisseurship than the old masters.

When an expert is required, he or she should be consulted first to see how they work and what their fee structure is. An appraiser should always have a commitment from the owner of the drawing to pay the fee, and it should be collected before the expert examines the work. "If the client is not willing to pay the fee, it tells you something about what the client thinks about the work," Ms. Harwood said. If you think the work is genuine, she recommends noting that the client would not pay the expert's fee on the appraisal. It is also important to remember that clients may not want to pay for an appraisal or expert's examination if their drawing turns out not to be authentic.

J. L.

Are Collectors Destroying Our Cultural Heritage?

BASHING ANTIQUITY COLLECTORS, including museums and the art trade serving them, is a fast-growing, politically correct diversion. Newspapers have reported on a number of controversial exhibitions and the claims of various countries for repatriation of alleged looted art. Almost all of these accounts have been negative, denouncing the owners of ancient art. The issue has become overly emotional, with those opposed to collecting questioning the honesty of those who engage in that activity. In reality, the two factions have common interests and should be working together—which happens with decreasing frequency. Perhaps it is time to reexamine collecting, the raison d'être for the art trade.

Collectors want a comparatively unrestricted marketplace in which only material stolen from inventoried sources would be seized and returned to the country of origin. Archaeologists insist that no objects without an "acceptable" provenance should be sold. They regard all illegally exported artifacts as stolen, a controversial position. For example, objects recovered by a landowner are not considered stolen under our law. Material deemed state property by a foreign entity usually cannot be recovered from the U.S. even when illegally exported. The exception is material banned from importation by the Cultural Property Protection Act of 1983.

We should consider a position near the middle ground in this argument—one that recognizes the real concerns of both archaeologists and collectors. The first priority should be the preservation of historic sites and monuments, along with material found in them with an archaeological context. Excavation by untrained or unauthorized persons is harmful and should be prevented. Despite international treaties both in place (UNESCO), and anticipated (UNIDROIT), only governmental agencies in art-rich countries can accomplish the goals of protection and conservation of their cultural patrimony. However, their resources are usually inadequate for these tasks. No one seriously doubts the illegal export of valuable objects from clandestine excavations—a situation that continues to this day. This criminal activity would not take place without a market for it.

On the other hand, the international trade in antiquities is neither the sole nor the most important cause of the destruction of historic sites. The major factors are war, poverty, and the population explosion. Governmental policies that encourage the exploitation of archaeological areas destroy more of their nation's history than does looting. This does not provide an adequate excuse for tolerating illegal excavation. Recognition of the core problems allows the construction of a legal and moral framework that can effectively deal with the problem rather than simply seek scapegoats to blame for a complex, destructive, and entangled situation.

A number of countries that complain bitterly about the illegal export of antiquities permit the internal sale and collection of such material. How

does this policy discourage looting? Both civilian and military leaders in some art-rich foreign states are among the principal abettors of the exportation and exploitation of protected art. Many state parties to the UNESCO Convention of 1970 punish, by denying the use of their land, poor citizens whose farms lie on or adjacent to archaeological sites. These people are discouraged from reporting any finds they accidentally discover. Repressive regimes, whose leaders are often among the wealthiest people in their societies, maintain abject poverty in their countries and yet require the poorest peasants to report anything of value they find. Some of these governments have importuned the U.S. to enforce their export control laws by banning the importation and requiring the repatriation of material without an export permit.

Art-rich countries must reform their societies to accomplish meaningful regulation of the international art trade. In the meantime, some collectors of illegally exported art are preserving objects for posterity. For example, pre-Columbian gold and other intrinsically valuable material would be melted down or broken up without an art market. Archaeological sites are bulldozed and covered over in a rush towards industrial, agricultural, and housing development. If there were no monetary reason for preserving the artifacts found in them, they would be destroyed. With this alternative, it is better to salvage whatever is possible, even if the archaeological record is lost.

Illegal activity, beginning with clandestine excavation or theft from storehouses and ending with the violation of export regulations, supplies some portion of the art trade. No one accurately knows the amount of illicit material that enters the market, but it varies greatly from country to country depending on the amount of security in place, the economic conditions, and the desirability of the artifacts. In the very important collecting areas of Classical, Egyptian, and Middle-Eastern art, it surely represents only a small fraction of what has legally left the host countries. This is evident when one recognizes the extraordinary number of objects legally exported before World War II. Many many ancient objects ranging from complete temples to virtually microscopic artifacts came to the West through divisions of excavated material. Some went to private collectors like the famous Lord Carnarvon, but most stocked museums in the U.S., Germany, Great Britain, and France. Legal export of ancient art began in earnest in the middle of the eighteenth century and reached a peak in the nineteenth and early twentieth century. Private collectors purchased much of this material, most of which found its way, by sale or donation, into public museums. The remainder has contributed substantially to the legal art market.

An attempt to quantify the percentage of the objects in the trade that comes from licit sources would be speculative, but to label all unprovenanced material tainted is equally so. There is a great gap in our knowledge of the recent history of many millions of ancient artifacts that left their original sites during the last two millennia. A recent article in *The Wall Street Journal* (Dec. 15, 1994) brought this issue into sharp focus. The writer intimated that the classical art collection of Barbara and Lawrence Fleischman consisted mainly of looted material. The author's reasoning apparently was based on the fact that most of the objects, illustrated in the exhibition catalogue and shown at the Getty Museum, were unpublished. The author obviously misunderstood the import of the word "unpublished," perhaps assuming that all objects with provenances were published, and was probably unaware that very few works of art from antiquity have been catalogued.

One explanation for these apparent omissions of provenance is the highly secretive art trade, with few dealers willing to tell the potential buyer the source of their wares. Their reluctance to discuss or reveal their sources, even when legitimate, is irresponsible, but only the collectors, including museums, can force them to disclose this information. A buyer could reasonably insist on a satisfactory provenance. Many questions, including the possibilities of illegal excavation and export, can be answered by requiring the sellers of antiquities and ethnological material to divulge a sales history—a normal practice in selling paintings and manuscripts.

Some dealers not only keep their sources secret but also do not admit that works of art are often traded from dealer to dealer before being sold. This tends to inflate prices, to the detriment of the final buyer, and to obscure the recent sales history. The majority of dealers try to be fair and honest, although they too protect their sources. Ricardo Elia, a prominent critic of the art trade,

points out that dishonest dealers can only flourish because some collectors, including museums, turn a deaf ear and a blind eye to the history of a desired object.

Although the dealers assume the principal burden of polishing their tarnished reputations, critics of the art trade should tone down their rhetoric and acknowledge a legitimate art trade, one in which dealers and collectors are not criminals. Collectors, both private and institutional, have made a major contribution to the connoisseurship, conservation, and appreciation of ancient art. Many archaeologists, some among collectors' severest critics, first became interested in ancient civilizations by seeing their artifacts in museums. Many objects are preserved only because they were collected. A strong wave of nationalism, often supported by foreign archaeologists, has persuaded art-rich countries to retain their patrimony at any cost. This may someday backfire on those historians who criticize the art trade and investigate ancient civilizations. They may find themselves banned from their excavations by the nationalistic zeal they feed.

Archaeology itself is certainly one of the reasons for the decay of sites and monuments. Uncovering ancient sites begins the process of disintegration and, in some cases, subjects them to pilferage and looting. Object conservation needs further development and more practitioners. It cannot, at present, keep up with the fast pace of archaeology. Future generations will likely be more aware of our current destructiveness. In retrospect, nineteenth-century archaeologists, both amateur and professional, used techniques that are no longer acceptable. Perhaps a moratorium of all excavation is needed, at least until noninvasive methods are perfected.

This author urges moderation on all parties, including the art-rich countries. Many universities have difficulty fundraising for the humanities and seek support from patrons of the arts. Treating these people as pariahs is counterproductive, particularly if they have tried to be scrupulous in their purchasing. Many collectors are consumed by a passion for archaeology and understand the desirability of seeking knowledge and protecting the sites where it can be found. Many museums, although collectors themselves, actively excavate and preserve monuments. Opposing sides of this bitter dispute should understand and tolerate each other's views and work together to resolve differences. Such cooperation will enhance the study of art history and archaeology.

Jack A. Josephson

Treasure Salvors Win a Victory in the Ninth Circuit

Some estimate that there are approximately fifty thousand shipwrecks located in the navigable water of the United States.[1] When determining who should win the battle for title to cultural objects found on sunken shipwrecks, the competing interests of the government and salvor inevitably collide. Some preservationists fear that private salvors are destroying historic artifacts as they allegedly plunder, only to supply the commercial market. Although the government generally seeks to protect and preserve such wrecks and their treasures the role of salvors cannot be underestimated. Without salvors (who invest sub-

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[1] Mclaughlin, *Roots, Relics and Recovery: What Went Wrong With the Abandoned Shipwreck Act of 1987*, 19 Colum. VLA J.L. & Arts 149, fn.2 (1995).

stantially in such expeditions and necessary equipment, often spend years seeking the wreck, and imperil their lives in the process) the underwater booty would probably never see the light of day. As one treasure salvor has aptly pointed out: sunken shipwrecks "have no social or cultural value as long as they remain in the seabed."[2]

On December 4, 1996, the Ninth Circuit of the United States Court of Appeals issued its ruling in *Deep Sea Research, Inc. v. The Brother Jonathan et al.*, 102 F.3d 379 (9th Cir. 1996), amending its previous ruling of July 17, 1996. The Ninth Circuit held that title to the sunken shipwreck, the Brother Jonathan, would be determined under the traditional admiralty law of salvage[3] and finds,[4] and not pursuant to the Abandoned Shipwreck Act of 1987 ("ASA"), 43 U.S.C. § § 2101–2106, under which the federal government asserts title to certain historic wrecks and then transfers title to the states on whose submerged lands the wrecks are found.

The plaintiff treasure salvor, Deep Sea Research, Inc. ("DSR"), brought this in rem admiralty lawsuit seeking salvage rights and title to the shipwrecked Brother Jonathan, which sank off the California coast in 1865. The Brother Jonathan, a 220 foot wooden-hulled steamship, left San Francisco on July 28, 1865 bound for Oregon and Vancouver. The vessel was allegedly carrying valuable cargo, including a shipment of gold coin and bullion. There were 109 passengers and 54 crew on board when the ship sank after striking a submerged rock off the coast of Northern California; only 16 persons survived. After the disaster, five insurance companies paid claims totaling $48,490 for the loss of the vessel. It was estimated at the time that two-thirds of the ship's cargo was uninsured.[5]

After DSR filed suit, the State of California intervened in the action asserting that it had a colorable claim of ownership to the shipwreck under the ASA, the Submerged Lands Act, and California Public Resources Code ("CPRC") § 6313. California also argued that because the wreck met the requirements of the ASA, the district court lacked subject matter jurisdiction over DSR's claim under the Eleventh Amendment of the United States Constitution, which prevents congressional authorization of suits by private parties against unconsenting states. California claimed that the suit was, in actuality, against California, since the federal government transfers title in qualified wrecks to the states under the ASA.[6]

The district court denied California's motion to dismiss DSR's action holding that the Eleventh Amendment did not bar DSR's claim; the wreck had not been "abandoned" as that term is used in the ASA; CPRC section 6313 was preempted by the ASA; a warrant for arrest of the vessel would issue to support DSR's salvage claim; and a preliminary injunction would issue protecting DSR's exclusive salvage rights. The Ninth Circuit affirmed those rulings. Accordingly, the vessel did not fall within the purview of the ASA, but rather under the traditional maritime law of salvage and finds.

California Was Not Entitled to Eleventh Amendment Immunity

When California intervened in the lawsuit, it moved to dismiss under the ASA, which required

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[2] Melvin A. Fisher, *The Abandoned Shipwreck Act: The Role of Private Enterprise*, 12 Colum. VLA. J.L. & Arts 373, 376 (1988).

[3] "Under the law of salvage, the salvor of an imperiled vessel is entitled to a liberal salvage award from the res of the vessel. Salvage awards are intended to advance the public policy goal of encouraging those who come upon imperiled vessels to take the often costly and dangerous steps necessary to recover property in the absence of a negotiated agreement." *Deep Sea Research*, 102 F.3d at 383, fn.2, *citing, Columbus-America Discovery Group v. Atlantic Mutual Ins. Co.*, 974 F.2d 450, 459 (4th Cir. 1992).

[4] "Under the law of finds, title to property that is abandoned on or beneath the ocean vests in the first finder lawfully and fairly appropriating it and reducing it to possession with the intention of becoming its owner. However, an exception is made where the wreck is embedded in state or privately owned submerged lands, in which case, title vests in the owner of the land." *Deep Sea Research*, 102 F.3d at 383, fn. 3, *citing, Zych v. Unidentified, Wrecked, and Abandoned Vessel, Believed to be the SB "Seabird,"* 811 F.Supp. 1300, 1314 (N.D. Ill. 1992), *aff'd* 19 F.3d 1136 (7th Cir.), *cert. denied sub. nom.*

[5] *Deep Sea Research, Inc. v. Brother Jonathan et al.*, 883 F.Supp. 1343, 1346 (N.D. Cal. 1995).

[6] The United States also intervened in the action solely to defend the constitutionality of the ASA, which was challenged by DSR.

that the district court determine whether the Brother Jonathan met the requirements of the ASA. If it did, the federal court would *not* have jurisdiction to adjudicate the title dispute. If, on the other hand, the Brother Jonathan did not meet the criteria of the ASA the federal court would have exclusive admiralty jurisdiction over the title issues under traditional maritime law. The purpose of the district court's rulings (the review of which was the subject for the Ninth Circuit's opinion) was not to determine the merits of the title dispute but rather to determine whether the ASA and CPRC section 6313 applied to the Brother Jonathan.

The Ninth Circuit rejected California's argument that DSR's suit in federal court was barred under the Eleventh Amendment, indicating that it was appropriate for the district court to require California to prove, by a preponderance of the evidence, that the Brother Jonathan fell within the parameters of the ASA, i.e., that the vessel was abandoned; located on a state's submerged lands; *and* either embedded in the sea floor or determined eligible for listing in the National Register. "[T]he party asserting immunity has the burden to establish that it is entitled to immunity even if the determination of that issue touches the merits of the claim."[7] The ASA does not vest title to qualified wrecks directly in the state, but rather the ASA vests title in the federal government, who then transfers such title to the state. Accordingly, the Ninth Circuit held that a federal court may adjudicate whether a wreck meets the requirements of the ASA without implicating the Eleventh Amendment.

The Abandoned Shipwreck Act

There are three requirements that a wreck must meet to fall within the parameters of the ASA: It must be abandoned; located on a state's submerged lands; *and* either embedded in the sea floor or determined eligible for listing in the National Register of Historic Places ("National Register"). The ASA provides that the federal government may assert title to wrecks meeting these requirements. "Only after the federal government takes title to the abandoned shipwreck may title then be transferred to the state."[8] In contrast, the traditional admiralty law of salvage and finds will apply to disputes involving wrecks not governed by the ASA.[9]

Test for Abandonment

The ASA does not contain a definition for the term "abandonment." The Ninth Circuit held that the district court had properly applied the traditional common law rule in determining abandonment. Under that standard, a wreck is not deemed abandoned unless either "1) title is affirmatively renounced or 2) abandonment can be inferred from the lapse of time or failure to pursue salvage efforts on the part of the owners."[10]

DSR presented evidence that a number of insurance companies had insured the cargo of the wreck and that these companies took title to at least part of the wreck by right of subrogation when they paid claims on the Brother Jonathan.[11] Evidence was also offered of agreements DSR reached with two of the insurance companies assigning title in the wreck to DSR. In addition, undisputed evidence was presented by DSR that the technology required to salvage the Brother Jonathan had not been developed until the last few years, so that successful salvage efforts would not have been possible until recently. "When the technology to conduct salvage operations has been developed recently, failure on the part of an owner to attempt to salvage the wreck does not give rise to an inference that the owner has abandoned title to the vessel."[12] Accordingly,

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[7] *Id.*, 102 F.3d at 387.

[8] Id., 102 F.3d at 387.

[9] *Id.*, 102 F.3d at 383 and Footnotes 1 and 2 *supra.*

[10] *Id.*, 102 F.3d at 388.

[11] *Id.*,102 F.3d at 388. The ASA provides that "When the owner of a sunken vessel is paid the full value of the vessel (such as receiving payment from an insurance underwriter) the shipwreck is not considered abandoned. In such cases, title to the wrecked vessel is passed to the party who paid the owner." *Id.*, at fn. 6, *citing, Abandoned Shipwreck Act Guidelines*, 55 Fed. Reg. 50120 (1990).

[12] *Deep Sea Research*, 102 F.3d at 388, *citing, Zych v. Unidentified, Wrecked and Abandoned Vessel, Believed to be the SB "Lady Elgin,"* 755 F.Supp. 213, 216 (N.D. Ill. 1990), *AMENDED* 1991 WL 2536 (1991).

the Ninth Circuit affirmed the district court's holding that the Brother Jonathan was not "abandoned" because insufficient evidence was proffered to prove that title had been affirmatively renounced or that an inference could be made that the wreck had been abandoned from the passage of time or the owner's failure to make salvage efforts.[13]

No Partial Abandonment

California also argued that even if insurance companies did not abandon title to part of the cargo for which they paid claims, that portion of the wreck that was uninsured should be considered abandoned. The Ninth Circuit rejected this argument and concluded that the Brother Jonathan should be treated as a legally unified res for two reasons: "First, if we were to find that the vessel had been partially abandoned, both the federal court and the state court would be adjudicating the fate of the Brother Jonathan. It is unlikely that Congress intended such a confusing and inefficient approach in adopting the ASA. Second, such an approach is inconsistent with the general rule in maritime law of treating wrecks as a legally unified res."[14] Accordingly, the Ninth Circuit held that it would not divide the wreck of the Brother Jonathan into abandoned and unabandoned portions.

California's Public Resources Code Section 6313 Held Preempted by the ASA

Under California's Public Resources Code section 6313, California asserted title to all abandoned shipwrecks on state-owned submerged lands within three miles of the mean high tide, that are more than fifty years old or of special historical significance (eligibility for inclusion in the National Register of Historic Places).[15] Among other things, section 6313 takes title to shipwrecks that do not meet the requirements of the ASA. The Ninth Circuit affirmed the district court's holding that section 6313 was preempted by the ASA to the extent section 6313 asserts title to shipwrecks that are beyond the scope of the ASA. The Ninth Circuit pointed out that Section 7 of the ASA makes clear that Congress intended to transfer title to the states only for wrecks that meet the requirements of the ASA. All other vessels continue to be the subject of exclusive federal admiralty jurisdiction, pursuant to Article III, section 2 of the United States Constitution.

Conclusion

The Ninth Circuit's ruling was appealed by the State of California and oral arguments before the United States Supreme Court were recently heard on December 1, 1997. An opinion by the Supreme Court is expected by the end of the current term. The Ninth Circuit's ruling, if upheld, shows that the ASA will not always displace traditional federal admiralty law and its accompanying incentives to discover sunken shipwrecks and their treasures, as some had feared. The issue of what constitutes "abandonment" is often a focal issue in determining jurisdictional issues as well as the respective interests of a finder and the original title holder, or its successor-in-inter-

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[13] The Ninth Circuit found it unnecessary to reach the issue of whether the Brother Jonathan was "embedded" under the ASA, whether the ASA is constitutional, or whether judicial notice should be taken that on October 12, 1995, the Brother Jonathan was determined eligible for inclusion in the National Register, since the ASA was held not to apply to the dispute.

[14] *Deep Sea Research*, 102 F.3d at 389.

[15] Section 6313 provides in pertinent part as follows: (a) The title to all abandoned shipwrecks and all archeological sites and historic resources on or in the tide and submerged lands of California is vested in the state. (b) As used in this section, "submerged archeological sites" and "submerged historic resource," shall be given the broadest possible meaning, to include any submerged object, structure . . . or vessel and any associated cargo, armament, tackle, fixture, human remains, or remnant thereof, . . . which is historically or archeologically significant . . . (c) Sites with archeological or historical significance shall be determined by reference to their eligibility for inclusion in the National Register of Historic Places. Any submerged archeological sites or submerged historic resource remaining in state waters for more than 50 years shall be presumed to be archeologically or historically significant. Cal. Pub. Res. Code 6313.

est.[16] If the Ninth Circuit's ruling is affirmed, it will add some clarity to the often pivotal inquiry of when "abandonment" may be inferred, as well as to the Eleventh Amendment immunity, preemption, and partial abandonment issues asserted by the State of California.

[16] *See e.g., Columbus-America*, 974 F.2d 450 (4th Cir. 1992); *Moyer v. Wrecked and Abandoned Vessel known as the Andrea Doria*, 836 F.Supp. 1099 (D.N.J. 1993); and *Zych v. Unidentified, Wrecked and Abandoned Vessel*, 755 F.Supp. 213 (N.D. Ill. 1991).

CARLA SHAPREAU

Art Book Review

PAINTING BY NUMBERS: KOMAR AND MELAMID'S SCIENTIFIC GUIDE TO ART

Edited by JoAnn Wypijewski. 205 pp. New York: Farrar Straus Giroux. $50.00.

". . . art is only for chosen spirits . . . masses without judgment always like that which they should despise and always criticize that which is of highest worth."

—Michelangelo Buonarroti

"This is a totally dissident art. Mostly, of course, because of the question, Who are the viewers? Who is the audience? Nobody asks this question."

—Alexander Melamid

IN THE RELATIONSHIP between artist and audience, not much has changed since the sixteenth century. Michelangelo's words echo sentiments associated with Clement Greenberg or any number of American post-war theorists and critics. Wary of any effort that might promulgate the public art favored by fascist regimes, artists since the forties have taken more inward routes to inspiration. Even American pop art was as much a critique as a celebration of American consumer culture, and no one ever polled the nation before making a silkscreen of a Campbell's Soup can.

Enter Vitaly Komar and Alexander Melamid, who grew up in the post-revolution Soviet Union and have spent the past twenty years observing American culture. Living in a society that championed collaboration, these artists came to maturity in academies that endorsed Socialist Realism as the only popular art. As emigrés, they bring enthusiasm as well as critical distance to their interaction with our obsessions. Even if someone else conceived this particular strategy to force both science and art off their pedestals, it is hard to imagine anyone better suited for it.

The book is a continuation of a poll of American art tastes commissioned in 1993 by Komar and Melamid in conjunction with The Nation Institute. The poll was conducted by a professional public opinion research firm and the results employed to produce two paintings, *America's Most Wanted* and *America's Most Unwanted.* The Alternative Museum in New York displayed the paintings and other artifacts from the survey, and *The Nation* published the results in March 1994. Since then, the artists have discussed their work in several public forums and have continued to poll other countries. According to the preface, almost two billion people have been surveyed to date. The results have produced more paintings, which are also presented in the book.

The book is a culmination of these efforts, but it is merely a document of a complex performance work still in progress. Komar and Melamid have seized on two areas of great contemporary interest and reverence. By conflating the nature of art with the practice of polling public opinion, the artists have felicitously united high and low culture for the present era. Their use of an established market research firm to conduct the polls as well as computers

to generate graphs and even the working models for their paintings also demonstrates a clever appropriation of the "scientific" tools and products of contemporary capitalism.

From the results in America and ten other countries, the artists discovered an astounding consistency. The surveyed populations, including countries as apparently incongruous as Kenya and Iceland, prefer a painting of a landscape in predominantly blue colors. This "blue landscape," the artists' catchall term for the resulting phenomenon, changes slightly from nation to nation but has the sort of iconic power that might force conclusions that the work has some primal imprint on us all.

But that is just one explanation the artists offer for a composition that Arthur Danto noted is also a familiar wall calendar subject around the world. According to the artists, Domenichino was the source for the basic elements of the painting. Significantly, respondents did not actually say they wanted a blue landscape. It is an interpretation extracted from the poll results for favorite color and favorite subject. For all their professed enthusiasm and reverence for the project, it is here that the artists—who at times acknowledge that the public responses to a poll may not indicate true private sentiments—massage the statistics slightly to create a painting implied, but not exactly inferred, from the answers.

Komar and Melamid use the blue landscape as a paradigm to discuss free will, artistic genius, democracy, communism, spirituality, quality in modern art, and many other topics. The artists have a fluent command of this century's art historical developments and express their ideas in refreshingly clear language. While they do not take themselves too seriously, they are mature artists who do not intend to merely tweak the establishment.

Ultimately, the poll, as presented, responds to the utopian movements of the early century. Rather than choosing the purity and utility of constructivism and the Bauhaus, the masses appear to prefer a nineteenth-century ideal. As Melamid states, "A dream of modernism . . . is to find a universal art. People believed that the square was what could unite people, that it is really, truly universal. But they were wrong. The blue landscape is what is really universal, maybe to all mankind."

The Nation issue that featured the poll and the paintings received more positive and vehemently negative letters than any other in its publication history. Some reactions in the book attest to a perceived threat still remembered from fascist artistic mandates and an active fear and distaste for kitsch that the blue landscape inspires. Yet, as one of the first groups to poll China, the artists effectively demonstrate the plight of a population still governed by totalitarians. The majority of the Chinese responses to the poll questions—"not sure" or "depends"—communicate their oppression just as well as any other artistic endeavor. To devise the Chinese "most wanted" painting, the artists had to use what few positive responses were available. Those brave enough to state their mind requested another blue landscape.

As a document of the project, the book's content is exceedingly visual. Along with eleven countries' least and most wanted paintings, the artists present their results in colorful computer-generated graphs and maps. Photos from the exhibition show Komar and Melamid's data projected in three dimensions and mounted on pedestals as sculpture, a nod to minimalists' renderings of quasi-scientific data in artistic form. Their play with the shape and color of the text is reminiscent of futurism and dada's creative graphic design.

The text consists of an interview with the artists that reveals their motives and design for the poll. There is also a recapitulation of the project and its fallout by the editor, JoAnn Wypijewski, and an analysis of the project's significance by Arthur Danto. Two statisticians present highlights of survey and compound the international data for the most basic questions of the survey. All of the American survey responses are also included.

The choice to present the artists' responses as given, in the uncorrected grammar of recent Russian immigrants, allows the reader a better understanding of their personalities and ideas. Their Russian heritage and specifically their post-Revolution upbringing fostered their focus on issues of mass consumption and popular art. While they purport to continue in this tradition and hope to someday find a true pop art, they allow some mischief to seep out of their theories.

Mr. Danto's analysis of Komar and Melamid's American career and their current work is helpful

background for those left confused by the simultaneous sobriety and humor in the work. He is not willing to deem the paintings themselves postmodern, but recognizes the artists as such and finds in the work as a whole a "complex aesthetic and an intricate relationship to the history of art."

J. L.

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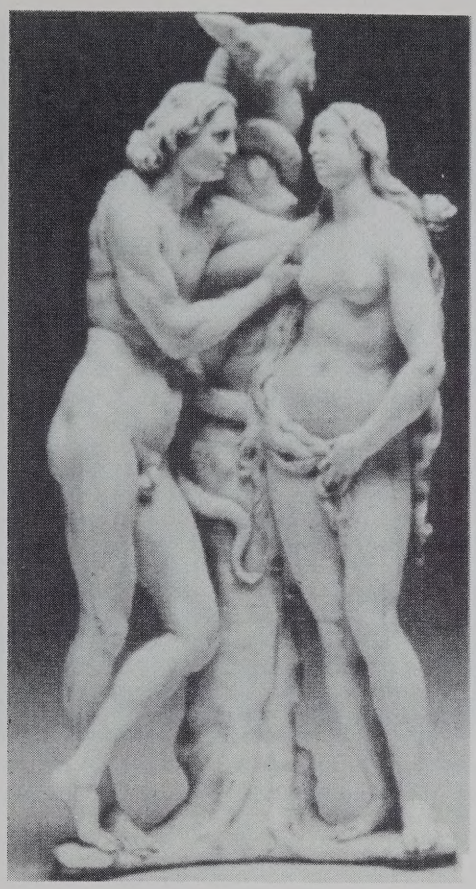
Ring depicting a royal ritual, ca. 1800 (Benin culture, Nigeria). Cast brass. Near-black patina. Diam. 10.5 in. Ht. 3.5 in. Written in red on underside: 53.643. *N98.11. Cleveland, OH. Jan. 3, '98.

Virgin and Child (Italian, 18th century). Oil on canvas. Diam. 122 cm. *N98.61.1. Montesarchio, Benevento, Italy. Mar. 12, '96. Interpol no. E-63/6-1997.

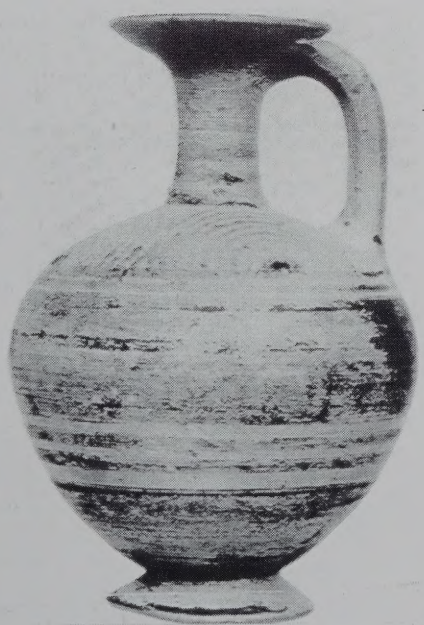
Frans Francken II (Flemish, 1581–1642) and Abraham Govaerts (Flemish, 1589–1626). *Autumn.* Oil on copper. 25 × 42 cm. On the back possibly a wax seal with the arms of the Marquis of Livois. *N98.64.1. Angers, Maine-et-Loire, France. Sep. 6, '97. Interpol no. E-132/10-1997.



Jorg Petel (German, 1601–34). *Adam, Eve and the Serpent.* Ivory. Ht. 25.3 cm. Width 11.8 cm. Inscribed "IPF 1627." *N98.31.1. Antwerp, Belgium. Feb. 23, '97. Interpol no. E-80/7-1997.

Georges Petit de Chemellier (French, d. 1908). *La Famille,* 1890. Bronze. Ht. 110 cm. Wt. 150 kg. Signed "Chemellier" on base. *N98.26.1. Angers, Maine-et-Loire, France. Mar. 22, '97. Interpol no. E-51/5-1997.

Vase (Greek, 10th–9th century). Clay. Ht. 15.3 cm. Diam. body 9.1 cm. *N98.33. Makrygianni, Greece. Jan. 18–Mar. 7, '97. Interpol no. E-52/5-1997.

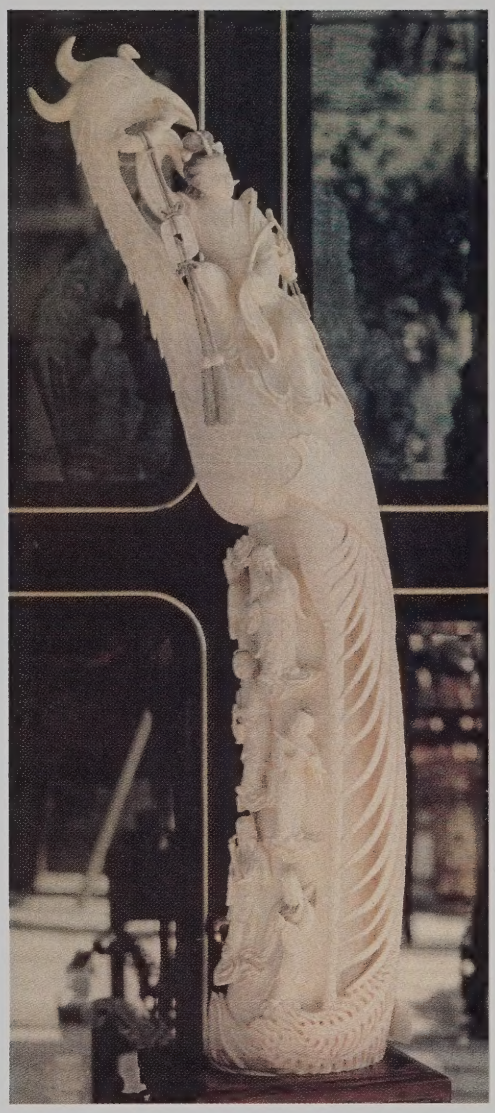


Peter Paul Rubens (Flemish, 1577–1640). *Rape of Lucretia,* 1608–10. Oil on canvas. 187 × 214.5 cm. *N98.40.1. Potsdam, Germany. 1945. Interpol no. E-106/9-1997.

Stone head (Chinese, Song dynasty, 960–1279). Approx. ht. 74 cm. Approx. wt. 182 kg. Removed from full-length statue of a foreign envoy. *N98.70.1. Gongyi, Henan, China. Nov. 27, '96. Interpol no. E-99/9-1997.

Leandro Bassano Da Ponte (Italian, 1557–1622). *Anatomist,* after 1596. Oil on canvas. Inscriptions on left: "BONTIVS LEO ETATIS SVE - LV" "LEANDER. . . BASS AQVS. . ." *N98.39.1. Schwerin, Germany. 1945. Interpol no. E-108/9-1997.

Karen Kunc (American, 20th century). *Cultivation,* 1991. Woodcut. 22 × 29 in. Edition no. 6/8. *N98.10.1. New York, NY. 1997.



Bird of Paradise tusk (Chinese, Ching dynasty, 17th–18th century). Ivory. Ht. 29 3/4 in. W. 4 in. D. 5 in. *N98.25. Minneapolis, MN. Before Dec. 12, '97. →

Prayer rug, ca. 1900 (Persian, Shiravan). 3 × 5 ft. *N98.12. Edinburgh, IN. Aug. 14, '97.

Delft covered jar, ca. 1900–20. *N98.14.3. New York, NY. Dec. 11, '97.

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